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Research on the Convergence of Foreign Investment Security Review Legal Systems in Europe and the United States

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Abstract

In recent years, the legal system of foreign investment security review in major economies around the world has shown an expanding and evolving trend. The foreign investment security review rules based on domestic law and national sovereignty have continuously eroded the international rule of law and international investment law rules. Phenomena such as the abuse of national security and security exceptions have led to tensions among domestic rule of law, international rule of law, and international customs. In particular, the foreign investment security review legal rules of relevant countries under the banner of national security have challenged the rules or principles such as investment facilitation, fairness and justice, and transparency, thereby affecting the investment rights and interests of the investors' home countries. Overall, as the foreign investment security review systems of various countries evolve, the problems of domestic laws overriding international law rules, interfering with the rights and interests of other countries, and the security of the global industrial and supply chains with domestic laws have become prominent. A review of the foreign investment security review systems in relevant countries reveals that the legal rules for foreign investment security review in major economies around the world show a development trend of high modification frequency, large discretionary power, extensive rule expansion, strong technological orientation, strict review degree, low transparency, and high ambiguity. It can be foreseen that this trend will gradually show a further tightening momentum along with the changes in international relations and the international economic environment.

Keywords

Foreign Investment Security Review, National Security, Cross-Border

Investment, International Economic Law

1. Introduction

The foreign investment security review system refers to a series of rules and procedures by which a sovereign state, in accordance with its own laws, regulations, and policies, authorizes specific government agencies to review and assess foreign investment behaviors that may affect national security, and decides whether to approve the investment or attach conditions to the investment based on the review results. The core purpose of this system is to actively attract foreign investment to promote economic development while effectively safeguarding national security and interests and ensuring that the inflow of foreign investment does not pose a threat to the country's key areas, core industries, and strategic interests. The foreign investment security review system originated in the United States in the 1970s. Since 2018, the United States and the European Union have accelerated the revision and expansion of regulations. From the perspective of the convergence of foreign investment security review systems, the legal rules of foreign investment security review in major economies around the world as a whole show a development trend of the high frequency of revision, large discretionary power, extensive rule expansion, strong technological orientation, strict review degree, low transparency, and high ambiguity. According to the statistics, the revision frequency of the foreign investment security review system in the United States is the highest. By searching the official websites of the White House, the Treasury Department, it was found that during the period from Apr. 2018 to Apr. 2025, the average frequency of the introduction or update of regulations and policies related to the foreign investment security review system in the United States reached to 1.8 times per year (14 times in total). Moreover, in terms of the America First Investment Policy, the United States will use all necessary legal instruments, including the Committee on Foreign Investment in the United States (CFIUS), to restrict PRC-affiliated persons from investing in United States technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors (The White House, 2025).

In 2025, the United States accelerated the process of institutional arrangements for the review of outbound investment. On February 21, 2025, the United States released an investment policy memorandum, placing greater emphasis on policy considerations prioritizing the United States and announcing that it would adjust its investment policy with a focus on further restricting two-way investment with China. So far, a system of parallel foreign investment security review and outbound investment security review has been initially established. During the same period, the EU updated its investment-related policies. By the end of April 2025, all EU member states have established or are in the process of establishing foreign investment review mechanisms. Among them, 24 member states have already es-

tablished such mechanisms, with Ireland and Sweden being the relatively late ones among the 24 countries. The draft of the bill was released on August 2, 2022, granting the Department of Enterprise, Trade and Employment of Ireland the right to review foreign investment in accordance with national security or public order standards. The Swedish Foreign Direct Investment Security Review Act came into effect on December 1, 2023, and the Swedish Inspectorate of Strategic Products (ISP) is responsible for reviewing foreign investment. Croatia, Cyprus, and Greece are advancing the relevant legislative procedures. Coincidentally, almost at the same time point as the United States, the European Commission officially released the "Legislative Proposal for the Framework Regulation on the Review of Foreign Direct Investment in the EU" in 2018 and then passed the "Regulation on the Review of Foreign Direct Investment in the EU" in 2019 and successively introduced multiple detailed measures. Moreover, on January 15, 2025, European Commission calls on member states to review outbound investments and assess risks to economic security (European Commission, 2025). The outbound investments reviews mainly covers semiconductors, artificial intelligence and quantum technologies. The ultimate goal of the European Commission is to ensure that key and proprietary technologies do not fall into "the Wrong Hands" and to prevent the negative impact of the EU's foreign investment on the economic security of the EU.

In addition, although there are significant differences in economic development levels among EU member states, since 2018, EU member states, including Germany, France, Italy, and Hungary, have gradually revised or expanded relevant regulations on foreign investment security review. After Brexit, the UK has made even stricter modifications to its foreign investment security review system. The National Security and Investment Act (NSI Act), which came into effect on January 4, 2022, and the supporting regulations to be introduced successively from 2023 to 2024 mark the UK's full entry into a period of strict review of foreign investment.

Overall, the evolution of foreign investment security review systems in major global economies is becoming increasingly strict. Judging from the trend, influenced by factors such as the generalization of national security and the priority of domestic interests, the development direction of foreign investment security review systems in major global economies will show a more tightened trend in the future. This trend will not be weakened by changes of the leaders or presidents in certain countries.

2. Analysis of Specific Rules

2.1. The Convergence of Ambiguity in the Definition of National Security

On April 10, 2019, the European Union adopted the Framework Regulation on the Review of Foreign Direct Investment. This regulation has established a "dual-track" foreign investment security review system at the EU level, with the review of member states as the foundation and the review of the European Commission

as a supplement. On February 13, 2020, the Foreign Investment Risk Review Modernization Act (FIRRMA) of the United States officially came into effect. The common feature of the two laws is that they have expanded the coverage of provisions related to national security and public interests. However, at the same time, they have blurred the systems of national security and public interests through very ambiguous expressions or incomplete enumerations, which has greatly reduced the predictability of the rules of the two laws. Besides, on May 8, 2025, the European Parliament endorses new screening rules for foreign investment in the EU (European Parliament, 2025). Under this new rule, sectors such as media services, critical raw materials, and transport infrastructure will be subject to mandatory screening by member states in order to identify and address foreign investment-related security or public order risks. More importantly, the Commission will have the authority to make final decisions in instances of disagreement, ensuring a more unified approach across the EU. Thus, the European Commission is able to act on its own initiative to screen foreign investment.

National security is closely related to discretionary power. The legal system related to national security has universal priority, taking precedence over any domestic and international laws. Discretionary power has infinitely magnified this repressive institutional power, ensuring that national security issues can always find a reasonable and legitimate basis as recognized by the ruling class. It is precisely out of concern for the economic development of a specific country that the ruling class attempts to find a simple, convenient, and useful legal tool to restrict foreign investment. At the same time, only the ruling class can have the final decision of certain cases. Neither the International law nor the law system of the home country of foreign investors can directly challenge the legal authority of this tool. National security precisely conforms to the original intention of the ruling class.

Discretionary power, however, is a kind of power, without any constraints. Once the ruling class believes that a certain investment threatens national security, this conclusion is very difficult to overturn. For the reason that, in fact, only the ruling class represents the will of the state. The expression of discretion in legal terms is "it considers necessary", and the provisions of "it considers necessary" is reflected not only in the foreign investment security review rules but also in the International Investment Agreement(IIAs). Through the database of the UNCTAD IIA Mapping Project, it was found that among 2598 IIAs, a total of 409 contained security exception provisions, accounting for 15.7% by Apr.2025. Among them, the agreements that came into effect after 2020 include Montenegro-Turkey BIT (2012), Colombia-Israel FTA (2013), Colombia-France BIT (2014), EU-Kazakhstan EPCA (2015), PACER Plus (2017), Cabo Verde-Hungary BIT (2019) and AfCFTA Protocol on Investment (2023). Moreover, 166 security exceptions were defined in IIAs, and 161 included the discretionary clause "it considers" in security exceptions(UNCTAD, 2025).

Under the legal framework of the WTO, "it considers" has strict restrictions.

However, in terms of the foreign investment security review system, "it considers" has almost no restrictions. WTO law has strict legal definitions at three levels: general exceptions, security exceptions, and economic emergency exceptions. For example, general exceptions are stipulated in Article 20 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 14 of the General Agreement on Trade in Services (GATS). Article 21 of GATT 1994 and Article 14BIS of GATS stipulate security exceptions. The legislative source of the security exception clause is Article 21 of the GATT. The purpose of the security exception is not directly related to the economy but an exception clause implemented for non-economic purposes. Overall, under the framework of the WTO, although the expression "it considers" has emerged, the discretionary power of the judges of the appellate body in the dispute settlement mechanism is extremely limited. They need to conduct sufficient reasoning and are also restricted by previous precedents. As Article 21 (b) of GATT1994 stipulates, "preventing any Party from taking any of the following actions which it deems necessary to protect its fundamental national security interests", the party invoking the security exception clause needs to give sufficient reasoning on what it deems considers necessary. However, this reasoning is the subjective will of the citing party. This has led to the fact that Article 21 has not played an important role in the practice of WTO dispute settlement so far. Furthermore, since many elements of invoking security exceptions are determined by the invoking party itself, the WTO dispute settlement mechanism is, in fact, unable to review disputes involving security exceptions, and thus, it is impossible to form de facto case law for security exception provisions. At the same time, the original intention of formulating security exception provisions is not to create a political or diplomatic exception. Nor is it to provide a basis for certain countries to impose their social, political, or economic concepts on others. However, in practice, due to the ambiguity of relevant regulations, security exception provisions are often abused or misused. Therefore, even in the field of multilateral economic and trade rules, the problem of abuse caused by the ambiguity of national security and its expansion cannot be avoided.

Furthermore, the enactment of national security laws itself is a manifestation of discretionary power. The power to enact laws can be completely in the hands of the ruling class and is highly arbitrary. Whether at the level of International law or domestic law, national security is a catch-all rule. All issues that are difficult to solve or strategic considerations can be incorporated into it. Therefore, national security has become an instrumental system for the state to formulate laws.

First of all, national security belongs to national sovereignty and provides protection for the country to formulate laws. The ruling class always needs to seek a reasonable basis when formulating laws and regulations. The fundamental proposition that national security belongs to national sovereignty provides an appropriate reason to solve the legitimacy of legislation and also offers an irrefutable basis for the arbitrariness of national security laws.

Secondly, it is relatively less difficult to create laws through the national security

path. As mentioned above, the current effective International law rules do not provide clear definitions or restrictions on national security. Therefore, legislators only need to consider those factors that they believe may threaten national security, and at the same time, they will consciously incorporate their own strategic interests into them. Furthermore, national security legislation generally does not have an direct or immediate impact on the public. Apart from factors such as terrorism, ordinary people seldom care about the potential impacts brought about by emerging security fields such as financial security, technological security, and biosecurity. All these factors significantly reduce the difficulty of formulating national security related laws.

Meanwhile, the process of formulating national security related laws was significantly faster than that of other laws. The speed of the formulation of laws and regulations concerning national security is significantly higher than that of other legal provisions. The legislative power of a country is usually strictly restricted, initiated through rigorous procedures, and the formulation cycle is generally long. However, from the practices of various countries, the formulation speed of legal systems related to national security far exceeds that of other laws. Take the United States as an example. In 2007, the Foreign Investment and National Security Act (FINSA) of the United States took nearly 2 years and 6 months from its proposal to its promulgation. However, after 2018, the legislative process in the United States has significantly accelerated, especially the FIRRMA Pilot Program (CFIUS, 2020). It took about one year from the proposal to the implementation of the "Pilot Program". The "Regulations on Specific Investments Made by Foreigners in the United States" issued by the U.S. Department of the Treasury took only six months, while the 2018 Export Control Reform Act of the same period took only five months. For the European Union, it took less than 11 months from the "Legislative Proposal on the Framework Regulation for the Review of Foreign Direct Investment in the EU" to the official text, while during the same period, climate-related green regulations, such as the EU Carbon Tariff Mechanism (CBAM), took more than two years.

Finally, the areas involved in national security cannot be exhausted. The contents involved in national security are determined by the ruling class of a country. Therefore, the fields involved in national security reflect the will of the ruling class and present an inexhaustible characteristic, which leaves sufficient space for arbitrary law creation. For instance, the United Kingdom, Germany, France, and Italy, which attach great importance to the security review of foreign investment, have expanded the security review of foreign investment to the data field by amending domestic legislation. Theoretically speaking, the state can extend the scope of foreign investment security review and national security to any field, including future technologies, although such technologies may not exist at present. Meanwhile, long-arm jurisdiction enables the country to extend the hand of foreign investment security supervision beyond its own territory. If long-arm jurisdiction becomes popular, it will form a cage of security review on a global scale.

2.2. The Convergence of the Contents of Covered Transactions

The Exon-Florio Amendment of 1988 (an amendment to the Comprehensive Trade and Competitiveness Act of 1988) authorizes the President of the United States to investigate the "national security" impact of foreign corporate mergers and acquisitions or controlling holdings in the United States. It listed five items included in "national security". The first one is the impact on domestic products needed for national defense. The second is the domestic production capacity to meet the demands of national defense, including available human resources, productivity, science and technology, materials, other supplies and services. The third is the impact of the control of domestic industries and commercial activities by foreign citizens on the ability and productivity to meet national security needs; Fourthly, the potential impact of proposed or ongoing transactions on the military supplies, equipment and technology exchanges of sensitive countries. The fifth is the potential impact of proposed or ongoing transactions on the United States' international technological leadership position in the field of national security. Overall, when determining whether a transaction poses a threat to national security, the main considerations are national security and the maintenance of technological advantages. This is also the most important way for the United States to judge foreign mergers and acquisitions and other transaction behaviors.

The Byrd Amendment of 1992 stipulates that if one party to the acquisition is controlled by a foreign government or acts on behalf of a foreign government, and the acquisition results in a U.S. company engaged in activities that may affect national security being controlled by foreigners. Then, CFIUS conducts an active review of foreign mergers and acquisitions. Furthermore, the reporting obligations of the president and his authorized representatives are stipulated. The reporting content should include whether there is sufficient evidence indicating that one or more countries are implementing coordinated strategies, acquiring US companies in key technology and production fields where the US technology is in a leading position.

Subsequently, based on the proposal of Congressman Byrd, Section 837 of the National Defense Authorization Act of 1993 made extensive revisions to Section 721 of the National Defense Production Act, reviewing transactions controlled by foreign governments, thereby forming the Byrd Amendment. Until after the "9/11" incident, the awareness and sensitivity of the US government and enterprises towards "national security" have significantly increased. Against this backdrop, "national security" has become a priority for any major event, and the issue of "national security" has, without exception, extended to cross-border investment transactions involving foreign governments and foreign investors in sensitive industries.

On October 24, 2007, and November 21, 2008, the United States respectively introduced the Foreign Investment and National Security Act (referred to as "FINSA") and the Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons, which explains the content of Critical Technology, Timeline, Factors for consideration, Covered transaction, Technology risk assessment and Risk-based analysis. At the same time, special attention has begun to be paid

to issues such as State-Owned Enterprises (SOEs), foreign government control, important infrastructure, and energy security. Despite being criticized for its transparency in both substance and procedure, FINSA became a legal model for the national security review of cross-border investment transactions by foreigners in the United States for a considerable period of time thereafter. The issue of "national security" gradually became the biggest obstacle to such transactions.

It can be seen from the revised contents of the relevant regulations that each revision has elevated "national security" to a new height and endowed it with new meanings. In response to the background of the revision of the "FIRRMA Pilot Program" and "FIRRMA" (the Foreign Investment Risk Review Modernization Act of 2018), the United States mainly made strategic considerations from three aspects: the rise of foreign manufacturing, technology transfer, and controlled investment. The Trump administration also attributed the above three issues to "national security".

On February 13, 2020, FIRRMA officially came into effect. The new regulations, on the one hand, expand the jurisdiction of CFIUS and the scope of transactions it covers. For instance, CFIUS can review (1) Non-controlling and non-passive investments in US enterprises involving key technologies, critical infrastructure, or sensitive personal data. (2) Provide more guidance on CFIUS assessment of transactions that lead to foreigners' access to sensitive personal data of US citizens; (3) Audit exemption categories applicable to certain countries have been established; (4) Implement a mandatory declaration system for foreign investments in which certain foreign governments have significant interests; (5) Allow all filings to be made through the simplified filing method, whether voluntary or mandatory. Meanwhile, the early regulations mainly reviewed investment and merger and acquisition transactions that led to the actual control of US enterprises by foreigners. However, according to the FIRRMA regulations, CFIUS also has the right to review foreigners' non-controlling or non-passive investments. For example, (1) Obtain significant non-public technical information owned by key technologies, core infrastructure, and sensitive personal information enterprises (referred to as TID enterprises) in the United States; (2) Serve as or appoint a member of the board of directors or an observer of TID Enterprise in the United States; or (3) Participate in substantive decisions involving the use of sensitive personal data, critical technologies or critical infrastructure of U.S. citizens by a U.S. TID enterprise. In addition, for transactions involving key technologies in 27 sensitive industries, the mandatory declaration should be made at least 30 days before the delivery. In terms of sensitive data, sensitive personal data includes financial data, geographical location data, health and genetic test data, and other health and genetic test data, etc. Investment transactions involve the following areas will be strictly reviewed, namely 1) The business is targeted at providing products or services to US government personnel or contractors; 2) Where the number of people involved in the data exceeds one million within 12 months; Or 3) Its business objective is to maintain or collect data of more than one million people, and such

data is part of the main products or services of the American enterprise. The expansion of the jurisdiction and covered transactions of CFIUS leads to CFIUS having jurisdiction over all investment in the covered transactions and may even trigger the mandatory reporting obligations of foreign investors, greatly increasing the difficulty for foreign investors in investment and merger and acquisition.

On the part of the European Union, the EU has strengthened the review scope of relevant covered transactions through legislation and has unified the opinions of EU countries as much as possible. On April 10, 2019, the European Union adopted the Framework Regulation on the Review of Foreign Direct Investment. This regulation has established a "dual-track" foreign investment security review system at the EU level, with the review of member states as the foundation and the review of the European Commission as a supplement. Moreover, the "Legislative Proposal for the Framework Regulation on the Review of Foreign Direct Investment in the EU" (the "Framework Proposal") expands the interpretation of foreign direct investment as "Any kind" in Article 2 "Definition". This means that any investment behavior that meets the relevant review conditions may be obstructed. At the same time, it is stipulated that foreign direct investment refers to foreign investment activities that are established or continuously maintained between foreign investors and EU enterprises and have a direct connection. Compared with the past when only control rights and other contents were stipulated, the requirements for foreign investment that meets "any form of continuous maintenance and direct connection" are lower. Even if there is no control right, any investment behavior based on "continuous maintenance and direct connection" will also be included in the review scope.

Meanwhile, industries such as data storage, financial infrastructure, artificial intelligence, and sensitive information cover a very broad range of content. Almost all emerging fields can be included. Theoretically speaking, the scope of security review will be unrestricted. The major members of the European Union have paid particular attention to foreign investment in key technologies, energy, and infrastructure. The EU Regulation also emphasizes the review of key technologies, key raw materials, and key infrastructure. For instance, infrastructure and high-tech technologies that are crucial to the national economy and people's livelihood, such as energy, electricity, transportation, communication, artificial intelligence, semiconductors, cyber security, aerospace, quantum and nuclear technology, nanotechnology, and biotechnology, have all been clearly listed. It is believed that the above-mentioned key technologies, raw materials and infrastructure are related to the public interest and core competitiveness of the European Union.

Overall, Article 4 of the EU Foreign Investment Review Regulation non-exhaustively lists the factors that the EU and its member states need to consider when conducting security reviews of foreign investment, mainly involving the protection of national security and public interests, including five aspects: critical infrastructure, key technologies and dual-use objects, critical supplies, personal information data or its access and control capabilities, and media freedom and

diversity. According to Articles 6 and 7 of the EU Foreign Investment Review Regulation, regardless of whether a foreign direct investment transaction has been subject to relevant review in the country where the transaction is located if other EU member states believe that the foreign investment transaction may affect their own security or public order, other EU member states may provide Comments on the transaction to the country where the transaction is located. If the European Commission believes that the transaction may affect the security or public order of multiple member states, it may also put forward Opinions on the transaction to the country where the transaction is located.

Moreover, the European Parliament adopted the new foreign investment review rules on May 8, 2025. The rules aim to strengthen the review of foreign investments related to security and public order. According to the revised regulations, member states must conduct mandatory security reviews of foreign investment in areas such as media services, key raw materials, and transportation infrastructure. The new regulations also grant the European Commission the power to review proactively. That is, when member states have differences on the potential risks of a foreign investment project or when the investment may affect the overall security of the European Union, the European Union can directly initiate a review against foreign investment.

2.3. The Convergence of Key Technical Provisions

On October 17, 2024, the European Commission released the fourth annual report on foreign investment security review (European Commission, 2024). The annual report indicates that in 2023, the European Union received a total of 1885 foreign investment merger and acquisition transactions. In 2022, there were 2156 such transactions. The largest industry of merger and acquisition transactions was manufacturing (accounting for 26%), with key technologies being the main focus. From the data, it can be seen that manufacturing industries mainly based on key technologies have long topped the list of foreign investment industries in the EU, which has also raised concerns among the European Commission and member states. Therefore, taking key technologies as the focus of the review has become an important development direction for the EU's foreign investment security review legal system, as well as in the United States..

In terms of personal information data, with the advent of the digital age, the protection of personal information data is increasingly important. However, the legal and governance frameworks ragard it as a necessary way for responsible implementation while addressing dangers such as bias, mass surveillance, and autonomous warfare (Upadhayay & Sharma, 2025). Also, the EU's General Data Protection Regulation (GDPR) has established strict standards for the protection of personal information. Foreign investment security reviews in this field mainly focus on investment projects where foreign investors have access to and control over sensitive information and personal data. For instance, when foreign enterprises invest in EU Internet technology companies, if the company holds a large amount of user

personal information, the review authority will assess whether the investment will increase the risk of personal information data leakage, whether it will affect the implementation of EU data protection regulations, and whether it will pose a threat to the personal privacy of EU citizens. Take the investment of a certain Chinese Internet enterprise in a social networking platform of the European Union as an example. The EU review authority will focus on reviewing whether the investment will change the data management and protection mechanism of the platform, whether it will enable Chinese enterprises to obtain sensitive information about EU users, and whether the investment complies with the data protection laws and policies of the European Union.

On September 15, 2022, the Biden administration issued Executive Order 14083, which is the first time since the establishment of CFIUS in 1975 that a president has officially issued the five types of risk factors to be considered when reviewing Covered transactions. The first is to increase the review of key supply chains that may affect national security. Foreign investment transferring the ownership, rights, or control of certain manufacturing, services, critical mineral resources, or technologies that are crucial to national security. And foreigners may make the United States vulnerable to future disruptions in the supply of key goods and services. The order stipulates that the CFIUS should consider the impact of the involved transactions on the resilience and security of supply chains both within and outside the defense industry base. These considerations include alternative suppliers throughout the supply chain (including those located in allied or partner countries), the supply relationship with the US government, and the ownership or control rights being controlled by foreigners in a specific supply chain.

The second is the fields that affect the leading technological position of the United States, including but not limited to microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, and climate adaptation technologies. The executive order holds that although foreign investment helps promote domestic innovation in many cases, it is crucial to protect the United States' technological leadership position, especially when foreign investment involves sectors that are critical to the national security of the United States. This order specifically identifies industries that are crucial to the United States' technological leadership and national security, including but not limited to microelectronics, artificial intelligence, biotechnology and biomanufacturing, quantum computing, advanced clean energy, climate adaptation technologies, and the basic elements of agriculture and industry that have an impact on food security. And President and the peers also instruct CFIUS to consider whether the transactions involve manufacturing capabilities, services, critical mineral resources, or technologies in these fields. CFIUS should consider covering whether the transaction will lead to technological advancements and applications that may undermine national security in the future and whether the foreigners involved in the transaction have connections with third parties that may pose a threat to the national security of the United States.

The third is to increase the comprehensive assessment of investment in industries that affect national security. The executive order specifically states that some investments, when considered separately, do not pose a threat to national security and will have a relatively small impact. However, if combined with previous investments, they will amplify the impact on national security and cause technology outflows. For instance, the threat posed by a foreign company's acquisition of one company within a certain industry may be relatively low, but the threat posed by the foreign company's acquisition of multiple companies within that industry is much higher. To deal with such threats, the executive order stipulates that CFIUS should assess the risks arising from transactions in the context of multiple acquisitions or investments in a single industry or related industries.

Fourth, there is the risk of cyber security. Foreign investment in cyber intrusion or other malicious cyber activities may pose a risk to national security. Therefore, CFIUS should consider whether the transaction involved may provide a means for foreigners or their related third-party relationships to carry out such activities, as well as the cyber security posture, actions, capabilities, and means of all parties involved in the transaction.

The fifth is personal sensitive data. Data is an increasingly powerful tool for monitoring, tracking, tracing, and targeting individuals or groups of individuals, which has potential adverse effects on national security. Furthermore, technological advancements, coupled with access to large datasets, have increasingly enabled previously unidentifiable data to be re-identified or de-anonymized. The order stipulates that CFIUS should consider whether the transactions have access to sensitive data of US individuals and whether foreign investors or parties associated with foreign investors seek or have the ability to utilize such information to undermine national security, including through the use of commercial or other means. Executive Order 14,083 indicates that the Biden administration believes that the current scope of transactions covered by CFIUS is no longer sufficient to handle foreign investment issues related to national security, especially in areas such as advanced manufacturing, artificial intelligence, biomedicine, data security, and cyber security, which need to be expanded. Meanwhile, when CFIUS reviews covered transactions, it will not be limited to a single transaction. It will assess the threats to national security by integrating previous investments or multiple investments within the same industry in order to further prevent foreigners from obtaining key technologies of the United States through cross-border investments. From 2023 to 2024, the U.S. Department of the Treasury successively issued multiple guidelines, all of which mentioned paying attention to the security risks caused by key technologies.

The proposers of the FIRRMA believe that some enterprises enter the United States by setting up joint ventures, holding small shareholdings, making early investments in start-ups, etc., and such investment holdings generally do not exceed 10%. Therefore, CFIUS is unable to review them, and there is a possibility of obtaining sensitive technologies and evaders review. For instance, the reform of mi-

nority equity investment stems from the assumption that the current non-controlling investment from China will be converted into control in the future. Therefore, even minority equity investments without veto power will not be able to avoid CFIUS review, and this approach is often an important way for Chinese enterprises to invest in the United States. On November 18, 2024, the U.S. Department of the Treasury released the "Final Rules" for foreign investment security review. This rule is the first extensive update since the release of the FIRRMA in 2018. The "Final Rule" revises the provisions in the U.S. Foreign Investment Security Review Regulations regarding penalties for violations of legal or regulatory requirements or agreements, conditions, or orders issued therein. And negotiation of the mitigation agreement, with a focus on expanding the types of information that CFIUS requires transaction parties and other relevant parties to submit, is also included. (U.S. Department of the Treasury, 2024)

As stipulated in the announcement procedure of Section 800.501 of the Final Rules, if CFIUS determines that a transaction may cover the transaction data and may raise national security concerns, but the parties to the transaction do not submit a voluntary declaration or statement under this section, CFIUS will require the parties or other persons to provide necessary information to determine whether the transaction falls under covered transactions and whether it can affect national security. Section 802.501 further clarifies the procedural rules for notification. If the Committee determines that a certain transaction has not submitted voluntary declarations or declarations under this section and the Committee has not notified in writing, all parties that all review contents of the transaction have been completed, the transaction may still involve covered transactions and may raise national security issues. Then, the chairperson of the Committee has the right to request all parties to the transaction or other relevant personnel to provide the Committee with the necessary information in order to determine whether the transaction is a restricted real estate transaction or whether the transaction may raise national security issues. At the same time, Section 800.901 stipulates penalties and damages. That is, if any party submits a declaration or notice with false statements or missing information, the federal government has the right to impose a civil fine of no more than 5 million US dollars. The above regulations indicate that CFIUS is further strengthening the review of foreign investment by enhancing the availability of information in all aspects and, at the same time, adding fine rules to prevent the omission of any relevant information. The above-mentioned system essentially forms "Matryoshka doll" effect of the foreign investment security review system. That is, foreign investors must provide CFIUS with all information that may involve transactions or affect national security. If they fail to provide sufficient information, CFIUS will require investors to provide it in various ways. If investors do not cooperate, two possible outcomes may occur simultaneously: CFIUS will apply the fine rules and make a veto decision. At the end of 2024, after the Trump administration returned to office, it still emphasized preventing foreign investors from causing technology outflows by in-

vesting in key technologies in the United States.

3. Conclusion

Currently, governments increasingly view the acquisition of specific goods, materials, services, and technologies by rival states as a threat to their security (Svetlicinii & Su, 2024). From the perspective of rule expansion, the United States and the European Union have all expanded the scope of Covered transactions and Critical technologies. Covered transactions are the core content of this law system. The above-mentioned economies, without exception, have included key technologies and other contents that involve multiple factors within the scope of their covered transactions, while increasing the review power of the authorities and the scope of the mandatory declaration. Moreover, both the United States and EU have linked the foreign investment security review system with the export control system, showing a high degree of consistency in the scope of technology coverage. At the same time, future technologies have also been included in the covered transactions in the United States and EU.

In terms of technological orientation, compared with other legal rules, the foreign investment security review systems of various countries have an extremely high degree of legal technology and technicality, all presenting the characteristics of "technology-based law". Among the United States or the European Union, it is very difficult to find a law with such a high "technological content" in their domestic (or member state) legal systems. From practice, even the legislative or regulatory bodies may not be able to fully explain why a certain key technology endangers national security, let alone to what extent it endangers national security.

The phenomenon of the law system becoming stricter is widespread. Its prominent manifestation is that cross-border investment flows have been continuously restricted in recent years due to the restrictions of foreign investment security reviews by regulatory authorities. A review of the World Investment Report released annually by the United Nations Conference on Trade and Development (UNCTAD) shows that global cross-border investment flows as a whole have been declining year by year from 2018 to 2024, but foreign investment flowing into developing countries has been increasing. Countries or regions with a significant decline in cross-border investment inflows, all have strict foreign investment restriction measures. Therefore, in addition to the global economic downturn trend and geopolitical factors, investment facilitation restriction measures are the key influencing factors.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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